IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 2ND JANUARY 2007 / 2ND MAGHA, 1928

CRL.A.No. 987 of 2006()

SC.171/2005 ON THE FILE OF THE ADDL. DISTRICT AND SESSIONS JUDGE, FAST TRACK COURT (ADHOC)-II, KOTTAYAM

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APPELLANTS: ACCUSED 1 & 2

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1. BENSON @ ANTONY, S/O. LONAPPAN,
KOZHIKULLIL HOUSE, NEAR MATHEW PADAM,
WEST K.K.MENON SHED, ANTHIKKAD VILLAGE,
THRISSUR DISTRICT.

2. MICHALE, S/O.LONAPPAN,
KOZHIKKULLIL HOUSE,
NEAR MATHEW PADAM, WEST K.K.MENON SHED,
ANTHIKKAD VILLAGE, THRISSUR DISTRICT.

BY ADV. SRI.M.J.SANTHOSH

RESPONDENT: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/01/2007 ALONG WITH CRL.A.1147/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Crl.M.A.4707/2006 in Crl.A.987/2006

Dismissed.

2-1-2007

K. Thankappan,
Judge.

K.Thankappan,J.

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O.P.No. /2006

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Judgment

1-11-2006

K. Thankappan, J.

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Crl. A. Nos. 987 & 1147 of 2006

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Dated this the 2nd day of January,2007

JUDGMENT

Crl.A.No.987/2006 has been filed by accused 1 and 2 in S.C.No.171/2005 on the file of the Court of Addl. District and Sessions Judge Fast Track Court (Adhoc)-II, Kottayam. Crl.A.No.1147/2006 has been filed by the 2nd accused through the jail authorities. As the 2nd accused has already filed Crl.A.No.987/2006, Crl.A.No.1147/2006 is treated as duplicate and the case of both the appellants is dealt with in Crl.A.987/2006.

2. Both the appellants faced trial for offences punishable under sections 392, 397 read with section 120B IPC. The prosecution allegation against the appellants is as follows:- On 5-4-2004 appellants and the 3rd accused assembled in room No.27 in Bino Lodge, Kottayam and entered into a conspiracy to commit robbery by causing hurt to PW1 Manager of Baby's Service Petrol Pump and while PW1 was going to the State Bank of Travanocre, Kodimatha Branch for remitting the collection, holding a Samsonite bag, containing Rs.4,42,100/- cash, a cheque for Rs.9,413/- of Vettoor Customers, passbook of the bank, another cheque of the company for Rs.3,37,262/-, two pay-in-slips, counter foils and requisition paper, and

while he was climbing the 4th step of the staircase, the 1st appellant inflicted a cut on his right hand with a sword-knife and when he turned back the 1st appellant again cut on his head twice with the same weapon. At that time the 2nd appellant, who was accompanying the 1st appellant, snatched away the bag from his hands and when they started the bike, they fell down. At that time, hearing the hue and cry, people of the locality assembled there. Then the 2nd appellant took another sward-knife and brandished it at those who had gathered and they lifted the fallen bike and rode away. The further case of the prosecution is that after snatching the bag from the hands of PW1 the appellants and the 3rd accused went to Room No.301, Mukkungal Regent Tower, Kumali and on getting information that three suspected persons lodging in Regent Tower, PW18 along with others went to the Regent Tower and the articles were seized under Et.P8 mahazar. PW19 who continued the investigation laid charge before the court. As the 3rd accused was absconding, appellants were tried for the offences.

3. To prove the charge against the appellants, PW1 to PW19 were examined and Exts.P1to P18 were marked. MO1 to MO11 were also marked. On the side of the defence, Ext.D1 to D3 were marked. After closing the evidence, the appellants were questioned under section 313 IPC. They denied the allegation and stated that the case was foisted

against them. Relying on the evidence adduced by the prosecution, the trial court found the 1st appellant guilty under section 397 IPC and both the appellants found guilty under section 392 and 120B IPC and they were convicted thereunder. The 1st appellant was sentenced to undergo rigorous imprisonment for seven years under section 397 IPC and the 2nd appellant was sentenced to undergo rigorous imprisonment for five years under section 392 IPC. Aggrieved by the above conviction and sentence, the appellants have approached this Court.

4. Heard.

5. Three contentions are urged before this Court by the learned counsel for the appellant. Firstly, it is contended that the trial court went wrong in accepting the evidence of the prosecution witnesses, which are contradictory. Secondly, it is contended that the trial court committed a serious error in finding the appellants guilty of the charges levelled against them as there is no proper identification of the accused. Thirdly, it is contended that the trial court went wrong in finding that the 1st appellant guilty under section 397 IPC.

6. The prosecution case is that from 31-3-2004 to 5-4-2004 the appellants and the 3rd accused had stayed in Bino Lodge, Kottayam and they entered into conspiracy to commit robbery. In pursuance of the above conspiracy, on 5-4-2004 while PW1 was going to the State Bank

of Travanocre, Kodimatha Branch for remitting the collection and while he was climbing the 4th step of the staircase, the 1st appellant inflicted a cut on his right hand with a sword-knife and when he turned back the 1st appellant again cut on his head twice with the same weapon. At that time the 2nd appellant, who was accompanying the 1st appellant, snatched away away the bag from his hands. PW1 had given evidence before the court that he was the Manager of Baby's Srevice Centre Petrol Pump, Kodimatha and on the date of the incident at 12.30 noon while he was going to State Bank of Travancore, Kodimatha Branch he was having a Samsonite bag, which containing Rs.4,42,100/- cash, a cheque for Rs.9,413/- of Vettoor Customers, passbook of the bank, another cheque of the company for Rs.3,37,262/-, two pay-in-slips, counter foils and requisition paper, and when he reached the 4th step of the staircase, the 1st appellant inflicted a cut on his right hand with a sword-knife and when he turned back the 1st appellant again cut on his head twice with the same weapon and the 2nd appellant, who was accompanying the 1st appellant, snatched away the bag from his hands. He identified the 1st appellant who inflicted cut injury on his hand and on his head. He also identified the 2nd appellant as the person who snatched away his bag. The evidence of PW1 is supported by the evidence of PW2 to PW4. PW2 is the salesman of a spare parts shop by name Krishna Traders at Kodimatha.

He stated that he saw PW1 and the accused engaged in a grasping for the bag. He also stated that he saw the 2nd appellant with the bag on his shoulder sitting on the bike and the bike fell down. He further stated that the 2nd appellant took the sword-knife and brandished it at him. This witness stated that he had seen PW1 lying down with blood. He also stated that PW3 was also present at the scene of occurrence. He identified MO8 as the bag snatched away from the hands of PW1. PW3 is the Peon of the Bank. He had stated that he found a bike and a person lying on the road and another man waiving a sword-stick towards the on-lookers. He also stated that he informed the matter to the Bank Manager and then again came down and at that time two persons were seen taking the bike and rode away. It has come out in evidence that immediately PW1 was removed to the Medical College Hospital and at Medical College Hospital PW20 had examined PW1 and given Ext.P18 medical certificate. This witness stated that on 5-4-2004 at about 12.15 P.M. he examined PW1. He noticed two incised wounds, one on the right forearm, extensor aspect and the other on midline scalp. He also noticed a lacerated wound occipital region of scalp. This witness has also stated that the injuries are serious and likely to cause death. PW9 is the doctor who attached to Karithas Hospital at which PW1 was subsequently admitted. He stated that he examined PW1 and treated him as referred

from Medical College Hospital, Kottayam. He issued Ext.P4 certificate. The evidence of these witnesses would show that PW1 was injured as alleged by the prosecution.

7. The next piece of evidence against the appellants is with regard to the involvement of the 3rd accused and the conspiracy entered between the 3rd accused. The witnesses who were examined to prove the conspiracy entered between the appellants and the 3rd accused to commit robbery as alleged by the prosecution are PW5, PW6, PW12 to PW14 and PW18. PW5 and PW6 are Counter Managers of Bino Lodge. They stated that 3rd accused and the 2nd appellant had stayed for five days just before the attack on PW1 and on 5-4-2004 3rd accused told that they are vacating the room as his friend had met with a bike accident. They admit that from 31-3-2004 to5-4-2004 3rd accused and the 2nd appellant were staying in the Lodge and the 1st appellant used to come there. PW12 to PW14 and PW18 stated that the appellants and the 3rd accused were seen at Room No.301 of Mukkungal Regent Tower, Kumali and they were arrested from the room by PW18 on 6-4-2004. Further it has to be noted that PW11 stated that he was having a shop at K.S.R.T.C. Bus Stand, Kumali and on 6-4-2004 he had seen that PW18 came to room No.301 of Mukkungal Regent Tower, Kumali and recovered MO8 bag, MO12 and 13. He identified MO8 bag and MO12 and MO13. PW12 had given

evidence that the 2nd appellant used to come to the house of the 3rd accused who is residing very close to him. He also stated that the appellants used to come to the house of the 3rd accused on a bike and he identified the bike also. Considering all these aspects, this Court is of the view that the finding of the trial court that the subsequent conduct of the 3rd accused vacating the room at 5 p.m. on the relevant day saying his friend has met with a bike accident was a strong evidence indication that they were hatching a plan from the room together to attack PW1 for looting money from him is justifiable and hence it requires no interference by this Court.

8. With regard to the recovery of MO1 sword knife, the trial court relied on the evidence of PW10 and PW19. As per Ext.P7(a) statement given by the 2nd appellant, MO1 was recovered from underneath a culvert at Valanganam at Kottayam-Kumali Road. This witness has also stated that he is a witness to Ext.P5 recovery mahazar. The evidence of PW19 coupled with the evidence of PW10 would show that both the appellants went to the shop of PW8 and purchased MO1 and MO9 knives. This witness also identify MO1 and MO9. Hence, the trial court was justified in coming to the conclusion that the appellants had purchased MO1 and MO9 knives from the shop of PW98.

9. PW18 and PW19 who are the police officials who conducted the investigation and had given evidence in support of the prosecution case. PW18 had given evidence before the court that he had got information that three suspected persons lodging in Regent Tower and he went there and questioned the appellants and the 3rd accused and on examination he found bundles of currency notes and the possession of the notes they have not given satisfactory explanation. He deposed that he seized all the articles under Ext.P8 and arrested the appellants and the 3rd accused. Hence, the finding of the trial court that the prosecution had succeeded in proving the guilt of robbery against the appellants is justifiable. But the trial court has committed a serious error in finding that the first appellant was found guilty under section 397 IPC. The trial court missed the fact that unless and until the prosecution has proved that the robbery is made by five or more persons, the offence will not come under section 397IPC. If that be so, the conviction entered against the 1st appellant under section 397 IPC is irregular and illegal and hence, it is liable to be set aside. Further, even though the trial court found that both the appellants guilty under section 120B IPC, no punishment has been awarded against the appellants. On an over all appreciation of the entire evidence adduced by the prosecution, this Court is of the view that the prosecution has succeeded in proving that both the appellants had

committed offences punishable under section 392 read with section 120B IPC. Hence, they are liable to be punished thereunder.

10. In the circumstances, the conviction and sentence awarded against the 1st appellant under section 397 IPC are set aside and he is found guilty under section 392 read with section 120B IPC. The trial court had not imposed any penalty against the appellant under section 120B IPC. Hence, this Court is of the view that the appellants are liable to be sentenced under section 120B IPC. Accordingly, the appellants are found guilty under section 392 read with section 120B IPC and they are convicted thereunder and sentenced to undergo rigorous imprisonment for five years under section 392 IPC and rigorous imprisonment for three years under section 120B IPC. The sentences shall run concurrently.

With the above modification, the appeal are allowed in part.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.A.No. 987 of 2006

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Crl.A.No.1147 of 2006

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Judgment

2-1-2007